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ABSTRACT

Joint use agreements provide a school district and another entity, whether it be a city, county, non-profit, or private organization, with the opportunity to construct a facility and share both the capital and operating costs and responsibilities. The purpose of this manual is to introduce joint use agreements and their potential. The manual begins with a definition of what a joint use agreement is and what it is not. Next it suggests a number of considerations which should go into a joint use agreement and provides a guideline by which a joint use agreement can be drafted. Finally, the manual discusses some potential problems a district may encounter in the implementation of a joint use and some possible solutions to these problems. Each section includes a table to help summarize its main points. (Appendices contain the Civic Center Act, and two sample agreements.) (EV)

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JOINT USE AGREEMENTS
A HOW-TO GUIDE

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Joint Use Agreements
A How-To Guide

Presented April 22, 1997
San Diego, CA

By:

San Diego/Imperial Section Facilities Planning and Support
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INTRODUCTION

In the constant struggle to provide adequate facilities for students, school districts need to explore all possible funding options. One option that is open to school districts and is used with increased regularity is that of joint use agreements.

Joint use agreements provide the District and another entity, whether it be a city, county, non-profit or even private organization with the opportunity to construct a facility and share both the capital and operating costs and responsibilities. This is a valuable tool, considering the tremendous financial constraints most school districts find themselves facing.

Just how many school districts have used this option? While the number statewide is unknown, a recent survey of 105 school districts found that 80 of them had some kind of shared facility use agreement[1]. Thus, at a rate of approximately 75% usage, the value of joint use agreements is readily apparent.

The purpose of this manual is to introduce the reader to joint use agreements and their potential. The manual begins with a definition of what a joint use agreement is and what it is not. Next it suggests a number of considerations which should go into a joint use agreement and provides a guideline by which a joint use agreement can be drafted. Finally, the manual discusses some potential problems a district may encounter in the implementation of a joint use and some possible solutions to these problems. Each section includes a table to help summarize its main points. A series of appendices will provide more useful information and provide some actual agreements currently in place involving school districts in the San Diego area.

The San Diego/Imperial Facilities Research and Development Committee hopes you find the information in this manual helpful and we welcome any comments or suggestions you may have. Please direct comments to Tom Rizzuti, Committee Chair, at (619) 748-0010 Extension 2110.

[1] Survey conducted by R. Davis Cowles, Superintendent, Los Banos Unified School District.

SECTION 1: DEFINITION

We will begin this discussion with a definition of joint use agreements. Theoretically there are many possible definitions. This is because of the many different components which comprise a joint use agreement. For purposes of clarity we will outline a basic definition. A school district can use this definition as a springboard to come up with a definition which best suits its individual needs. This definition will be broken down into five basic categories what, why, when, who and where.

What

Part of the key to understanding what a joint-use agreement is, is to first understand what it is *not*. One might consider the temporary use of a multi-purpose room by a church or the use of baseball fields by little league as joint use agreements. However, these examples almost never constitute joint use agreements. Rather, they fall under Education Code Section 40040 et. Seq., also known as the Civic Center Act. Essentially, the Civic Center Act states that school facilities during non-school hours are civic centers that citizens and various groups are entitled to utilize, subject to terms and conditions set forth by the Board of Education. (For the complete text of the Civic Center Act, please see Appendix A. Under this Act, community groups such as those mentioned above rent school facilities and sign an agreement regarding limitations and requirements for use of the facility on a one-time or recurring basis. The facility, however, remains the sole possession and responsibility of the school district.

A joint-use agreement is a binding and more specific agreement between the district and another entity, be it private or public. In such an agreement, hours of use and responsibilities for maintenance are shared and clearly enumerated. Another significant difference between joint use agreements and the Civic Center Act, is that joint use agreements may mean the difference between whether or not a facility is constructed. Herein lies one of its greatest advantages to school districts.

Why

This is probably the most important component of the definition. As was mentioned above, the reason for entering into a joint use agreement is to limit the district's cost of both constructing and maintaining a facility. As the name implies, joint use agreements involve mutual effort and mutual benefit between the school district and one or more agencies. These agencies can include, but are not limited to; cities, counties, state agencies, non-profit organizations and private entities. As an example, one of the most common joint use agreements is that between a district and a city parks and recreation department regarding play fields adjacent to a school site. On a more creative level, perhaps a high school may construct a technology lab with the help of a local computer company and the company will use the lab on evenings and weekends. Whatever the

situation, joint use agreements are predicated upon the school district and other parties bringing their own resources to the construction and/or ongoing maintenance of the facility in question. Additionally, for districts who participate in the State School Building Program, joint use facilities are often not charged when determining a district's eligibility for new facility funding.

The advantages to this type of arrangement are clear. First of all, there is an obvious economy of scale working. Two or more entities pooling their resources into a facility may be able to get more for their money. Related to this is the concept of "0 + 0=2". Essentially, two agencies can acquire the use of a facility that neither party would be able to construct on its own.

When

Joint use agreements are most beneficial when the district identifies a need and makes the determination that it does not have the necessary resources to meet that need. The district must further determine that another agency or agencies will be interested in regular use of the facility, to the point that it warrants a capital investment for that agency. Finally, the parties must have differing demands as to when they want their primary use of the facility to take place. Another common situation a school district may find itself in is when it has some extra land and the other party does not. This situations can be ideal for joint use agreements.

Again, this speaks to a big advantage of joint use agreements. Beside the financial advantages already mentioned, joint use agreements can eliminate a large amount of tedious and redundant paperwork that accompanies the Civic Center Act through a one-time, long term mutual understanding. Additionally, the concept of joint "ownership" ensures that both parties will be more conscientious vis a vis care of the facility.

Who

As was mentioned above, the list of parties with which a school district might want to enter into joint use agreements is extensive depending on the type of facility the district is interested in constructing. A large percentage of current joint use agreements, however, are with other local governments (i.e. cities and counties) and involve either recreational (e.g. ball fields, swimming pools) or cultural (e.g. performing arts centers, libraries) facilities. But again, the possibilities are limited only by the district's imagination.

Districts need not initiate the idea of a joint use agreement. In fact, many joint use agreements will be initially proposed by the community. Once a community sees the successful implementation of joint use agreements, they will generally approach the district or other entity with other potential facilities for such an agreement. Thus, it is important for districts to be aware and have some kind of policy, either formal or informal, relating to these agreements. Hopefully, this manual will assist in that process.

Where

Joint use facilities are most often constructed either on or adjacent to existing school campuses. The examples mentioned above would fall into this category. However, joint use facilities do not necessarily have to be adjacent to a school campus. For example, a school may share an administration or warehouse facility with another entity.

Another advantage is underscored here. Joint use agreements can be used as a land use and advanced planning tool. A fiscal Capital Improvement Plan or Public Facilities Financing Plan may identify an expenditure of revenues which may be avoided through the establishment of a joint use agreement. Joint use facilities can prevent redundancy of facilities within a small area and allow both agencies to apply resources that might solely have gone to the facility in question to other areas.

Now that we know what a joint use agreement is and is not, we will take a closer look at exactly what goes into such an agreement.

Table 1
DEFINITION OF JOINT USE AGREEMENTS

WHO	WHAT	WHEN	WHERE	WHY
City or County Parks and Recreation Librarian Other Depts. as Determined Non-Profits Private Firms Childcare Agencies	Not Civic Center Act Specific Agreement Long term in nature Involves facilties Can involve staff time	Need exists without necessary resources Another entity has need in common Differing demands as to time of facility use	Usually on or adjacent to a school site Can be off-campus Warehouse or storage Swimming pools Training facilities Location can prevent redundancy of facilties (CIP's & PFFP's)	Limit capital investment and operating expenses Economy of Scale "0+0=2" Improve eligibility in state lease/purchase program

SECTION 2:
RECOMMENDED GUIDELINES FOR JOINT USE AGREEMENTS

Joint use agreements vary depending upon the facility to be shared. However, there is a common pattern followed by districts which leads to workable joint use agreements. Because each situation is different, the timeline for each joint use agreement varies. It is suggested that the district and the party desiring to share district facilities discuss time constraints and develop a calendar which includes milestone events required of each party.

1. ***Initial Contact***

   The origin of a joint use agreement generally starts with one party contacting the District with an expression of need. Once the need is clearly articulated and understood by the District and the requesting party, it is a good idea to "float" the general idea by the cabinet or the board to determine the feasibility of pursuing the project. This provides staff with the authority to continue discussion.

2. ***Scoping Meeting***

   Assuming that approval to continue discussions is provided by the board or the cabinet, representatives of each organization should meet to identify interests, develop strategies and define the anticipated end result. A brief outline of the salient points important to each party should be developed and reviewed so that both the district and the other party have a clear understanding of the direction of the discussions.

3. ***Site / Field Visits***

   Both parties should make field visits to various sites which could potentially satisfy the desired needs. Each site should be evaluated on its strengths in ultimately attaining the desired results. Are utilities and access available? Does the intended use conflict with surrounding land uses. How will the community react to the intended use or reuse of the facility? These are all questions which should be explored in the site / field visits. If the intended site is on a school site, it is strongly suggested that the principal and/or his or her assistant principal be included in the discussions. It is also a good time to inquire if there is a Faculty Advisory Council on site which might have comments or concerns about the proposed joint use. By establishing a good rapport with the site personnel, progress towards an effective joint use agreement could be attained much easier than one that is perceived as coming from "top down".

4. ***Development of a Draft Agreement***

After the district and the other party agree on a site, concept sketches of the proposed facility should be prepared and reviewed by the district. A site plan and elevation should be prepared by an architect and presented to the school site administration for review and comment. It is at this time that a draft joint use agreement is prepared and disseminated for review by the district and the other party. It is strongly encouraged that district legal counsel be included in the review of the draft agreement and its development towards one which could be brought to the board for approval. It is not uncommon for a rough draft to go through many revisions prior to one which could be brought forward for approval.

5. ***Public Review***

Depending on the nature of the proposed joint use, a public hearing may be required. In some cases the applicant is required by the local jurisdiction to obtain a Conditional Use Permit (CUP). This process requires a public hearing prior to approval of the CUP. Sometimes the district may request a public hearing to ensure that the community has had an opportunity to participate in the process. Public hearings should be held at convenient times so that working parents may attend, and they should be held at the site of the proposed joint use if feasible.

6. ***Cabinet Review***

In most districts, the cabinet has the responsibility to review items prior to placing them on the board agenda. The board item and the joint use agreement should be presented to the cabinet for review and comment. Facility plans, if applicable, should accompany the documents so that a clear understanding of the proposal exists.

7. ***Board Approval***

After appropriate district staff have completely and thoroughly reviewed the proposal, a board agenda item is ready to be prepared and presented to the board for approval.

8. ***Implement and Monitor the Joint Use Agreement***

After approval by both parties the joint use agreement is now ready for implementation. Someone on the district staff should be assigned to monitor the agreement to ensure that the district's interests are being met and should be the point of contact with the other entity.

Table 2
Recommended Guidelines for a Joint Use Agreement

Who	What	When	Where	Why	How
Who's Using the Facility?	Description of Facility	Contract Period	Location of Facility	Purpose of Agreement	Maintenance
Who's Responsible For What?	Definitions	Hours of Operation	Description of Facility to be Shared		Conflict Resolution Procedure
	Rent / Lease Terms				Coordination of Schedules
					Written Correspondence
					Termination Process
					Dispute Resolution
					Hold Harmless
					Severability
					Non-Discrimination
					OPSC Review

SECTION 3: COMPONENTS OF A JOINT USE AGREEMENT

The following section includes suggested components which all joint-use agreements should include, regardless of their focus.

1. ***Purpose of the Agreement***

   This section should clearly and concisely state why the District is entering into the joint use agreement. Is it because there is an economy of scale which can be achieved by pooling resources? Is it because the District must provide specific facilities which may be considered optional by the other entity, for example a library, a gymnasium, a large community center, an antenna for wireless communication? Is there an overriding need which cannot be accommodated by the local governmental agency having jurisdiction within the community?

   By defining why the District is entering into a joint use agreement, the terms of the agreement are tailored to the specific needs of both agencies. The purpose statement allows for slight modifications to the agreement without jeopardizing its intent. Changes in the political composition of boards or councils and demographic changes in the community can impact the operation of a joint use agreement. With a well defined mission statement, the joint use agreement should be able to withstand such pressures.

2. ***Definitions***

   A joint use agreement should be written such that any person with an average intelligence should be able to read it and understand what it means. It is said that the *Reader's Digest* is written so that a person with an eighth grade reading level can understand the contents of each story. Your joint use agreement needs to be received in the same manner. Nothing should be assumed. There are, however, specific terms which sometimes must be used which require defining. A definitions section will provide you with the ability to reduce the potential for ambiguity. The following terms are suggested for inclusion in the definitions section:

   A. Owner: Owner means the _____ School District.

      Owner: Owner means the _____ City (or County).

   B. Tenant: Tenant means the _____ School District

      Tenant means the _____City (or County) or Private Entity.

C. Facility: Facility means the common name of the facility to be jointly used. It's address could be included if it is known. In the event that there is no common name the facility can be identified by a description. For example, "a community pool in the new high school".

D. Contract Period: The contract period is that time period identified in Section ____ of this agreement.

E. School Year: The school year is defined as the 181 day period from September to June. Or, if the school is on a year round schedule, the period defined in the established track or tracks.

F. Utilities: Utilities are defined as sewer, water, electricity, natural gas and storm drain.

G. Normal Wear and Tear: Normal wear and tear is defined as the expected life cycle of the facility and its parts assuming it is used properly by the patrons and maintained regularly.

3. ***Project Description***

This section of the joint use agreement gives you an opportunity to specifically define the facility. For example, if the project is the construction of a gymnasium and a community center, this section will spell out the general parameters of the facility. "The city agrees to provide a 17,000 square foot gymnasium, two classrooms, one for dance and the other for arts and crafts and community use, and the required boy's and girl's and staff restrooms. The district agrees to provide one and one half acres of land on XYZ school for the construction of the facility and required parking and landscaping." Whatever the facility is, this gives you an opportunity to provide specific details regarding its size, contents, and intended use.

The *project description* section also lets you define who will use the facility. It is not uncommon for the local government to provide a facility which will be used by a third party. The YMCA or the local Boys and Girls Club, for example. A word of caution though, sometimes it is better to limit the use of the facility to the two parties in the agreement with a procedure included which defines how a third party user can be approved for access to the facility. In this manner a tenant can be removed if the tenant is not complying with the terms of the agreement.

The *project description* section should also provide an outline of the expected responsibilities of all parties. What will be the primary use of the facility? Is it a community center or a school building? Who is going to regularly maintain the facility? Who will staff the facility?

4. ***Rent / Lease Terms***

This section and the following section of the agreement apply only when the joint use agreement involves a lease. What will the compensation, if any, be for the use of the facility. If a private party desires to use district property, this section defines how much rent will be paid and when it will be paid. The language is usually pretty straight forward. For example, Tenant agrees to lease the facility from the owner on a month to month basis for $750 dollars per month. The rent shall be increased annually in accordance with the Consumer Price Index.

5. ***Contract Period***

This section of the agreement goes hand in hand with the Rent / Lease Terms. It defines the life span of the agreement. Usually agreements are for a period of five years with an understanding that a review of the entire agreement will be performed. For example, "Tenant agrees to lease the facility from the owner on a month to month basis for a period of 60 months. At the end of the 60 month period, the lease shall be evaluated to determine it's desirability for continuance by all parties."

6. ***Hours of Operation***

Quite often, the community desires access to the facility during the school day. This section allows the district the opportunity to define what part of the facility will be accessible during specific periods of the day. If the joint use is for the installation of an antenna and the operation of an equipment building, then the hours of operation is irrelevant. The facility may be used 24 hours per day. If however, the facility is a school building such as a library, gymnasium or performing arts building, the hours of operation become critical. It is in this section that the school day is defined. How will weekend use and after school use be allowed? Who will have access when. These are important considerations which the district must carefully consider when drafting the agreement.

7. ***Maintenance Procedures***

The issue of maintenance is always sticky. Sometimes both parties are so excited to be working cooperatively on the terms of the agreement that maintenance is forgotten. This section should define who will have the primary responsibility for maintaining the building, park or whatever is being used. How will vandalism issues be resolved? Will the district maintain the plant and bill the other party its pro-rata share? Which replacement materials are acceptable to the district? Will there be periodic reviews by

both parties to determine the status of the facility and insure its functionality? All these issues should be addressed in the maintenance procedures section.

8. ***Conflict Resolution Procedure***

A conflict resolution procedure should be established so that all parties, including the public, have a means to register concerns or complaints about the facility, its maintenance or its hours of operation. The procedure should establish a hierarchy. Who is the primary party for initial contact? Is this the same party with authority to resolve the issue? What is the follow-up procedure? Can the complaint be handled administratively or is board or council action required? What is the appeal procedure?

With an grievance procedure, many complaints can be addressed within a reasonable time frame. The last thing anyone wants is for a minor issue to blow up into a major fiasco because whoever is lodging the complaint feels that he or she is getting the "run around" by staff. The facility can even have a sign posted which identifies where comments or concerns can be directed. An office and a phone number are usually sufficient.

9. ***Termination of Agreement***

All agreements have an "I Want Out!" clause. This is not to presume that a joint use agreement will be doomed to failure. It simply acknowledges that changes in priorities occur or that the primary functions of the parties may change. Maybe something as basic as lack of future revenues may require the termination of the agreement.

The termination clause should define who has authority to terminate the agreement. It is generally accepted that the school board, city council, or similar official body are the only parties who, by action, can terminate participation in a joint use agreement. The termination clause should also delineate how the terms of any outstanding fund balance or debt will be addressed. If the city / county paid for the construction of the facility, and the district elects to terminate the joint use agreement, who is responsible for the long term financing? What if the tables were turned and the district paid for the facility and the city / county wants out? The manner in which these items will be addressed should be identified in the termination section.

10. ***Hold Harmless***

All agreements have a hold harmless clause which indemnifies each of the parties from legal liability.

11. ***Severability Clause***

This section maintains the integrity of the agreement should any section be found to be invalid or unenforceable. In simple terms, it states that if any portion of the agreement is found to be unenforceable the remainder of the agreement is still valid and binding.

12. ***Notice***

The notice section specifies how important correspondence will be delivered and to whom it will be addressed. Typical language includes..." All notices hereunder must be in writing and shall be delivered by a nationally recognized overnight express delivery service, or by registered or certified mail, return receipt requested, postage prepaid, to the addresses set forth below:

Tenant:	Tenants address
Owner:	Owner's address

13. ***Approval Process***

This section may be necessary if the district is participating in the Leroy Greene Lease Purchase Program. If the district had previously received state funding, the state has a lien on all district property. If this is the case, the use of rent proceeds may be limited. The lease purchase program stipulates that funds from the use of district property must be used for specific purposes. Deferred maintenance, classroom enhancement and land acquisition are acceptable. The construction of concession stands or district offices is generally unacceptable. The Office of Public School Construction staff has stated that the State Allocation Board must approve joint use agreements to ensure consistency with the state program.

As in many other agreements entered into by the district. It is strongly recommended that legal counsel review and approve the contents of the agreement prior to its approval by the board. Time should be included in the schedule to allow for the attorneys' review.

SECTION 4: POTENTIAL PROBLEMS AND SOLUTIONS

It is important to understand that joint use agreements are not a panacea for all of the difficulties involved with the construction and maintenance of joint use facilities. In fact, joint use agreements bring with them a whole new set of difficulties and challenges. Some of those challenges, as well as possible solutions, are described below. These difficulties and "lessons learned" are based on the experience of the San Diego Unified School District, with a total of 160 schools and 130,000 students. SDUSD has joint use agreements at 60 campuses, with eight more in progress.

I. PROBLEMS

Political/Community Expectations

Sometimes when an individual or group wants to initiate a joint use agreement, they first contact their elected representative, such as a city council member. This may be because they don't know which agency to contact or because they feel that they can get faster action by starting at the top of the decision-making chain. The elected official, in his or her zeal to satisfy constituents, may make promises for joint use facilities that are difficult to implement. For example, he or she may promise or commit inadequate funding for the staff(s) to design and construct the joint use improvements.

Staff Resources

As we have tried to make clear, all joint use agreements are not the same. Negotiation and drafting of the appropriate provisions for any particular case may involve extensive time of the staff of both agencies. Processing of the agreement through the board of education and city council is required as well as the design of the facilities, review of plans and administration of construction. Numerous meetings are required. If development of the agreement requires several months or more than a year, personnel in one or both of the agencies may change and the new staff will have a new understanding and, possibly, new requirements.

Process Time

Because of the changing priorities with the agencies involved, and the time required to obtain funding, joint use agreements can take several months to a couple of years to fully develop and obtain approval. The procedures for placing matters before the approving body of a large agency can take several months.

Changes In Funding

After a joint use agreement is approved the agency with the responsibility to maintain turf fields, for example, may undergo budget cuts. Frequency of mowing may be reduced or

spraying for pests may be eliminated. This creates ill feelings among the individuals who worked hard to obtain the joint use facilities. Unfortunately, as more facilities are provided, funding for maintenance becomes a greater burden and more difficult to provide. Also, as numerous joint use agreements expire, responsibilities for maintenance may shift and create new burdens on the agencies.

Public Perceptions

The perception of some members of the public is that public agencies have more money than they really do. Or they believe that two agencies without money can pool their resources and somehow create money. They may also have the perception that an agreement can be negotiated, drafted, approved, the plans prepared and construction completed in a short period of time. The gap between perception and reality must be bridged.

Communication

A joint use agreement can involve the school site, the public, various public agencies and various departments within the public agencies. Communication between the appropriate parties can be difficult. For example, a parent group can go to a city council member and request a joint use play field and even obtain funding without the implementing staff from either agency being aware of the proposal. This can result in inadequate funding and unrealistic promises for the timing of completion.

Determining Equity

As joint use agreements become more complicated and involve more factors, it becomes more difficult to agree upon equity for both parties. For example, most of the agreements in San Diego in the past involved school district property and city funding for construction and maintenance. This was determined to be equitable and functioned well for many years. However, agreements have become more complicated, with both agencies' property being involved and both agencies being involved in portions of the construction. Determining the overall equity for both parties over the term of the agreement in regards to the financial contributions of both agencies has become complicated and results in longer negotiations.

Expiring Agreements

There are 31 joint use agreements between the City of San Diego and the San Diego Unified School District which will expire during the next five years. These agreements were drafted with the understanding that, over the 25 year term of the agreement, both parties would have contributed equal value. We have not yet had experience renegotiating expired agreements. This is expected to be a lengthy, complicated process.

II. LESSONS LEARNED

Education

Many of the problems described above are the result of a lack of education of the general public and specifically those individuals or groups who would like to implement joint use facilities. Information needs to be readily available regarding the appropriate department within an agency to contact, the process to follow and the amount of time and funding required to successfully complete a project.

The San Diego Unified School District formed a joint use task force to develop a manual that could begin to provide the desired education. Included in the appendix to these materials is a copy of that manual. Specific phone numbers should be provided so that the appropriate person can be contacted early in the process. A contact should be identified who is knowledgeable about the entire process.

Involve All Stakeholders

Every party that will be involved in the development or approval of the joint use agreement, the design and maintenance of the facilities should be involved in the process.

Regular Meetings

Because of the numerous facilities with joint interest between the city and school district, there were a number of problems in coordination and communication. Relations were not acceptable. As a result, a 4-hour partnering session was conducted with district staff and city staff from various departments, primarily parks and recreation. This gave all staff an opportunity to express their problems with the relationship and to have a greater understanding of the other's objectives. As a result of this session, it was decided to establish a regular meeting date every month for the City Park and Recreation Department and the District's Facilities Services and Maintenance Departments to meet and confer on all of the active joint use issues. Other departments are involved as appropriate. This has provided an excellent opportunity to coordinate the projects and to make each other aware of new projects that someone may be considering. Problems can be identified before they become serious. Communication and understanding and relationships between the agencies have dramatically improved.

Improve The Agreement

Through the years of dealing with various joint use agreements and recent changes in the character of agreements, it has been necessary to revise the standard agreement that was used for several years and continually improve revisions to be more responsive and comprehensive. The agreements are longer than they used to be but there are fewer questions about responsibilities when they are being implemented.

Table 3
Potential Problems and Solutions

Problem	Possible Solution
Political/Community Expectations	Education; Involve All Stakeholders
Staff Resources	Regular Meetings; Improve Agreements
Process Time	Education
Changes in Funding	Regular Meetings; Improve Agreements
Public Perceptions	Education
Communication	Education; Regular Meetings
Determining Equity	Involve All Stakeholders; Regular Meetings
Expiring Agreements	Regular Meetings; Improve Agreements

APPENDICIES: CIVIC CENTER ACT AND TWO SAMPLE AGREEMENTS

CALIFORNIA CODES
EDUCATION CODE
SECTION 40040-40048

40040. This article shall be known and may be cited as the **Civic Center Act**.

40041. (a) There is a **civic center** at each and every public school facility and grounds within the state where the citizens, parent-teachers' associations, camp fire girls, boy scout troops, farmers' organizations, school-community advisory councils, senior citizens' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions which in their judgment pertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities in which they reside.

(b) The governing board of any school district may grant the use of school facilities or grounds as a **civic center** upon the terms and conditions the board deems proper, subject to the limitations, requirements, and restrictions set forth in this article, for any of the following purposes:

(1) Public, literary, scientific, recreational, educational, or public agency meetings.

(2) The discussion of matters of general or public interest.

(3) The conduct of religious services for temporary periods, on a one-time or renewable basis, by any church or religious organization that has no suitable meeting place for the conduct of the services, provided the governing board charges the church or religious organization using the school facilities or grounds a fee as specified in subdivision (d) of Section 40043.

(4) Child care or day care programs to provide supervision and activities for children of preschool and elementary school age.

(5) The administration of examinations for the selection of personnel or the instruction of precinct board members by public agencies.

(6) Supervised recreational activities including, but not limited to, sports league activities for youths that are arranged for and supervised by entities, including religious organizations or churches, and in which youths may participate regardless of religious belief or denomination.

(7) Other purposes deemed appropriate by the governing board.

40041.5. Notwithstanding Section 40043, the governing board of any school district shall grant the use of school buildings, grounds, and equipment to public agencies, including the American Red Cross, for mass care and welfare shelters during disasters or other emergencies affecting the public health and welfare. The governing board shall cooperate with these agencies in furnishing and maintaining such services as the governing board may deem necessary to meet the needs

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of the community.

40042. The management, direction, and control of school facilities under this article is vested in the governing board of the school district which shall promulgate all rules and regulations necessary to provide, at a minimum, for the following:

(1) Aid, assistance, and encouragement to any of the activities authorized in Sections 40041 and 40041.5.

(2) Preservation of order in school facilities and on school grounds, and protection of school facilities and school grounds, including, if the governing board deems necessary, appointment of a person who shall have charge of the school facilities and grounds for purposes of their preservation and protection.

(3) That the use of school facilities or grounds is not inconsistent with the use of the school facilities or grounds for school purposes or interferes with the regular conduct of schoolwork.

40043. (a) The governing board of any school district shall authorize the use of any school facilities or grounds under its control, when an alternative location is not available, to nonprofit organizations, and clubs or associations organized to promote youth and school activities, including, but not limited to:

(1) Girl Scouts, Boy Scouts, Camp Fire, Inc.

(2) Parent-teachers' associations.

(3) School-community advisory councils.

This subdivision shall not apply to any group that uses school facilities or grounds for fundraising activities that are not beneficial to youth or public school activities of the district, as determined by the governing board.

(b) Except as otherwise provided by law, the governing board may charge an amount not to exceed its direct costs for use of its school facilities. Each governing board that decides to levy these charges shall first adopt a policy specifying which activities shall be charged an amount not to exceed direct costs.

(c) The governing board of any school district may charge an amount not to exceed its direct costs for use of its school facilities by any entity, including a religious organization or church, that arranges for and supervises sports league activities for youths as described in paragraph (6) of subdivision (b) of Section 40041.

(d) The governing board of any school district that authorizes the use of school facilities or grounds for the purpose specified in paragraph (3) of subdivision (b) of Section 40041 shall charge the church or religious denomination an amount at least equal to the district's direct costs.

(e) In the case of entertainments or meetings where admission fees are charged or contributions are solicited and the net receipts are not expended for the welfare of the pupils of the district or for charitable purposes, a charge shall be levied for the use of school facilities or grounds which charge shall be equal to fair rental value.

(f) If any group activity results in the destruction of school property, the group may be charged for an amount necessary to repay the damages, and further use of facilities may be denied.

(g) As used in this section, "direct costs" to the district for the use of school facilities or grounds means those costs of

supplies, utilities, janitorial services, services of any other district employees, and salaries paid school district employees necessitated by the organization's use of the school facilities and grounds of the district.

(h) As used in this section, "fair rental value" means the direct costs to the district, plus the amortized costs of the school facilities or grounds used for the duration of the activity authorized.

(i) Any school district authorizing the use of school facilities or grounds under subdivision (a) shall be liable for any injuries resulting from the negligence of the district in the ownership and maintenance of those facilities or grounds. Any group using school facilities or grounds under subdivision (a) shall be liable for any injuries resulting from the negligence of that group during the use of those facilities or grounds. The district and the group shall each bear the cost of insuring against its respective risks and shall each bear the costs of defending itself against claims arising from those risks. Notwithstanding any other provision of law, this subdivision shall not be waived. Nothing in this subdivision shall be construed to limit or affect the immunity or liability of a school district under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, for injuries caused by a dangerous condition of public property.

40044. Any use, by any individual, society, group, or organization for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States or of the state by force, violence, or other unlawful means shall not be permitted or suffered.

Any individual, society, group, or organization which commits any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government by force, violence, or other unlawful means while using school property pursuant to the provisions of this chapter is guilty of a misdemeanor.

40045. No governing board of a school district shall grant the use of any school property to any person or organization for any use in violation of Section 40044.

For the purpose of determining whether or not any individual, society, group, or organization applying for the use of the school property intends to violate Section 40044, the governing board shall require the making and delivery to the governing board, by the applicant of a written statement of information in the following form:

STATEMENT OF INFORMATION

The undersigned states that, to the best of his or her knowledge, the school property for use of which application is hereby made will not be used for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States by force, violence or other unlawful means;

That ____, the organization on whose behalf he or she is making application for use of school property, does not, to the best of his or her knowledge, advocate the overthrow of the government of the

United States or of the State of California by force, violence, or other unlawful means, and that, to the best of his or her knowledge, it is not a Communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States. This statement is made under the penalties of perjury.

_____
(Signature)

The school board may require the furnishing of additional information as it deems necessary to make the determination that the use of school property for which application is made would not violate Section 40044.

Any person applying for the use of school property on behalf of any society, group, or organization shall be a member of the applicant group and, unless he or she is an officer of the group, must present written authorization from the applicant group to make the application.

The governing board of any school district may, in its discretion, consider any statement of information or written authorization made pursuant to the requirements of this section as being continuing in effect for the purposes of this section for the period of one year from the date of the statement of information or written authorization.

40046. Written statements of information as required by Section 40045 need not be under oath, but shall contain a written declaration that they are made under the penalty of perjury, and any person so signing the statements who willfully states therein as true any material matter which he or she knows to be false, is subject to the penalties prescribed for perjury in the Penal Code.

40047. Notwithstanding the provisions of this article or any other provisions of law, when a nonpartisan charitable organization organized under the laws of this state has constructed or will construct, subject to the provisions of Article 3 (commencing with Section 39140) of Chapter 2 of this part, a school athletic and youth center facility at no cost to a school district, upon a school-district-owned site to be owned by and for the benefit of the school occupying the site, the governing board of the school district, in accepting the donation and prescribing the conditions and restrictions with respect thereto, may permit the general use of the facility under the provisions of this article for specified supervised recreational activities which are sponsored by or conducted by the donor organization, and may also permit the donor organization to use the facility for this purpose at times when the facility is not being used by the school district for the educational program and related school activities of the designated beneficiary school, unless the use and occupancy of the facility by the donor organization would otherwise interfere with the regular conduct of the school. Any use granted to the donor organization shall, however, immediately and forever terminate if the donor organization denies the use of the facility to any person because of their race, religion, creed, national origin, ancestry, or sex.

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This section shall apply only to elementary school districts in San Diego County which had an average daily attendance of 425 or less during the 1970 -71 school year, and which, during the 1970-71 school year, had a modified assessed valuation per pupil in average daily attendance of between forty-five thousand dollars ($45,000) and fifty thousand dollars ($50,000).

40048. (a) Public primary schools shall post at an appropriate area restricted to adults information regarding missing children provided by the Department of Justice pursuant to Section 11114.1 of the Penal Code.

(b) Public secondary schools shall post at an appropriate area information regarding missing children provided by the Department of Justice pursuant to Section 11114.1 of the Penal Code.

APPENDIX B

AGREEMENT FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, AND LEASE OF TURFED FIELDS AND RECREATION FACILITIES AT

SCRIPPS RANCH HIGH SCHOOL SITE

THIS LEASE AGREEMENT is entered into between THE CITY OF SAN DIEGO, a municipal corporation (hereinafter referred to as CITY), and the SAN DIEGO UNIFIED SCHOOL DISTRICT OF SAN DIEGO COUNTY, CALIFORNIA, a political subdivision, in the State of California (hereinafter referred to as DISTRICT).

RECITALS:

It is to the mutual benefit of CITY and DISTRICT to contribute jointly to the establishment of recreational facilities which can serve the needs of both the general public and DISTRICT, and

CITY and DISTRICT have been cooperating in the use of numerous recreational facilities in accordance with the CITY-DISTRICT Recreation Agreement of September, 1948: and

CITY desires to supplement park acreage to meet community recreational needs: and

The estimated average life of all improvements to be constructed on the leased property is no greater than the term of this Agreement:

BASED UPON THESE RECITALS, THE PARTIES AGREE THAT:

1. Term. DISTRICT hereby grants to CITY a twenty-five (25)-year leasehold interest in the property hereinafter described, commencing on the date of execution hereof by DISTRICT. Provided, however, that if at any time during the twenty-five (25)-year period DISTRICT should declare the property hereinafter described as no longer needed for school purposes and if DISTRICT should propose to sell, lease or otherwise use the site in such a manner that park-type facilities maintained by CITY in the area hereinafter described would not be usable by CITY for park purposes, DISTRICT shall so notify the CITY in writing and grant to CITY a two (2)-year option, commencing on the date of said notification, to purchase the hereinafter described property at its fair market value. In the event of such notification, the Agreement shall terminate at the end of the two (2)-year option period or upon written notification by CITY that CITY does not intend to exercise its option.

2. Property. The real property covered by this Agreement shall consist of a parcel more particularly described in Exhibit "A", attached hereto and by this reference incorporated herein.

3. Consideration. Good, valuable, and adequate consideration exists in the mutual benefit enjoyed and the legal detriment incurred by CITY and DISTRICT as a result of their entering into and fulfilling this Agreement.

DOCUMENT NO. 00-18082

FILED JUL 05 1994
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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4. Use of Property. DISTRICT may, at DISTRICT'S sole discretion, place or permit to be placed upon the leased area, portable buildings, structures, equipment, and apparatus upon thirty (30) days written notification to the City Manager. The placement of such items may be for the purpose of, but not limited to, the operation of public education and/or other education-related activities. In such an event, DISTRICT shall, at DISTRICT'S expense, make any necessary modifications to the irrigation system and other improvements which may have been installed at CITY expense. At the completion of such use DISTRICT shall restore the improvements installed at CITY's expense to their original condition or to a condition satisfactory to the City Manager. In the event the placement of such facilities, described above, deprives the CITY of the uses specified under this Agreement, DISTRICT shall either reimburse CITY for that portion of the twenty-five (25)-year term hereof that CITY does not have use of the premises or portion thereof, on a percentage basis, or DISTRICT shall extend the lease for a term equal to the term the property is used for such temporary facilities.

5. City Use of Property. CITY may use recreational facilities identified in Exhibit "A" (consisting of lighted softball field, lighted soccer field and multi-purpose field) in connection with its public recreation programs at all such times as they are not reserved for DISTRICT use or such other uses permitted under paragraph 6, below. CITY agrees to coordinate community use of said recreational facilities during nonschool hours. Parking shall be available for CITY recreational activities on a first come first serve basis except when parking is needed for DISTRICT educational purposes.

6. District Use of Property. DISTRICT shall have exclusive use of property Monday through Friday, 8 a.m. to 5 p.m., on each and every day that school is in session. CITY and DISTRICT staffs may negotiate additional hours as necessary.

7. District Responsibilities. DISTRICT agrees to construct or cause to be constructed recreational facilities which include, but is not limited to, turfed play fields, such as multi-purpose field, softball field with lighting, and soccer field with lighting, irrigation system, playground equipment, underground electrical service lines and systems, concrete sidewalks, drainage as required, and landscaping in accordance with plans and specifications approved by CITY and DISTRICT prior to the commencement of construction. DISTRICT shall pay for the cost of all landscape architectural and engineering services; printing and advertising; and, of all construction, except for soccer field lighting. All construction shall meet the requirements and standards of CITY and DISTRICT and all applicable provisions of the California Education Code and Administrative Code. DISTRICT shall be responsible for all litter collection and removal during those days when school is in session.

8. City Responsibilities. CITY shall reimburse DISTRICT for the cost of lighting soccer field, at a cost not to exceed One Hundred Thousand Dollars ($100,000) which shall include but is not limited to, electrical conduits, light standards and electric panel, upon presentation of an invoice for such work. CITY shall maintain the turfed fields to include softball, soccer and multi-purpose fields and all aforementioned facilities at its sole cost and expense in a timely and workmanlike manner within its annual budgeted resources and consistent with its city-wide maintenance formula. All such

maintenance work on property herein described, shall be performed by CITY employees only unless otherwise approved in writing by DISTRICT. CITY shall be responsible for litter collection and removal for events sponsored by CITY.

9. Utilities. CITY shall pay all costs for irrigation of turfed fields and related slopes as shown on Exhibit "A" by metered system separate from school facilities. DISTRICT shall, as part of the construction contract, provide the necessary two (2) two-inch meters for such irrigation which meters shall be in CITY's name. In addition, DISTRICT shall invoice CITY annually for use of electricity on the softball and soccer fields for its recreational programs. The charge for electricity shall be computed by DISTRICT for a full school year's approximate usage of One Thousand and Forty (1,040) hours of use each year for softball field and Eight Hundred and Thirty-Two (832) hours of use each year for soccer field. The approximate hours of use as described above shall be subject to annual review. The first year shall be calculated on a reduced usage schedule as agreed between CITY and DISTRICT. Such charges shall include but not be limited to the monthly demand charges and the current July 1 energy rates of each year. CITY shall be invoiced by DISTRICT each year in July for ensuing year's charges which shall be payable by CITY to DISTRICT within 60 days of receipt of invoice. The formula for calculation of the charges covered in this paragraph is more particularly described in Exhibit "B", attached hereto and by this reference incorporated herein.

10. Renovation of Fields. District reserves the right to renovate certain fields as needed and to close or limit use of fields until final inspection of renovations occur by District staff. Renovations shall occur during the period of July 1 to mid-August as required.

11. Joint Review. CITY and DISTRICT shall meet annually prior to January 1 of each year to review the joint use of the leased premises. As a result of this review, the use schedule as identified in this Agreement may be revised upon the mutual consent of both CITY and DISTRICT. Said changes, when made, shall then become a part of this Agreement.

12. Commencement of Work. Should work not commence on the site described herein within two (2) years from the execution date of this Agreement, subject Agreement shall be voidable for all or separate parcels as mutually agreed by CITY and DISTRICT. Such date of commencement of work on the subject site shall be mutually agreed upon by CITY and DISTRICT. Upon completion of such work by DISTRICT, DISTRICT shall furnish CITY with complete "as-built" drawings.

13. Improvements. No improvements shall be installed by DISTRICT nor shall construction on said improvements be begun until plans and specifications for said improvements are reviewed, approved, and signed by both parties. All CITY financed improvements installed upon said real property shall remain the property of CITY during the term of the leasehold and will be removed by CITY upon request by DISTRICT at termination of the leasehold, and said property shall be returned to DISTRICT free of all legal encumbrances. In the event CITY does not so remove said improvements upon expiration of this Agreement, as requested in writing by DISTRICT, DISTRICT may remove, sell, or destroy the same at CITY expense.

14. Quiet Possession. CITY, subject to performing the covenants and agreements herein, shall at all times during the term of the Agreement peaceably and quietly have, hold, and enjoy the said property for the term aforesaid.

15. Entry and Inspection. DISTRICT reserves, and shall always have the right, to enter upon said real property for the purpose of viewing and ascertaining the condition thereof.

16. Assignment. CITY shall not assign this Agreement or any interest herein without the prior written consent of DISTRICT. Any such assignment without such consent shall be void.

17. Equal Opportunity Compliance. DISTRICT agrees to monitor any and all contractors, subcontractors, independent contractors and employees for compliance with Equal Opportunity and non-discrimination requirements and to hold CITY harmless from any and all liability, claims, damages, or injuries to any person in connection with any acts or omissions rising therefrom.

18. Compliance with Law. At its sole cost and expense CITY shall comply, and shall secure compliance by persons within its control and authority, with all the requirements of state and federal authorities now in force, or which may hereafter be in force, pertaining to the said premises or the operations conducted thereon: and shall faithfully observe and secure observance of all state and federal statutes now in force or which may hereafter be in force, in the use of said premises by persons within its control and authority.

19. Assigns. Time is of the essence of each and all of the terms and provisions of this Agreement, and this Agreement shall inure to the benefit of and be binding upon the parties hereto and any successors thereof as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations, and agreements in the Agreement shall extend to and bind any successor(s) of the parties.

20. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition of this Agreement.

21. Administration of Agreement: Notices. Control and administration of this Agreement is under the jurisdiction of the Superintendent as to DISTRICT'S interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this Agreement or by law required to be given or served upon DISTRICT may be given or served by certified letter deposited in the United States mails, postage prepaid, and addressed to the San Diego Unified School District at 4100 Normal Street, San Diego, California 92103-2682, Attention: Superintendent, or may be personally served upon DISTRICT or any person hereafter authorized by DISTRICT to receive such notice. Any notice or notices provided for by this Agreement or by law to be given or served upon CITY may be given or served by depositing in the United States mails, postage prepaid, a certified letter addressed to the City Manager, City Administration Building, Charles C. Dail Concourse, San Diego, California 92101. Any notice or notices given or served as provided herein

shall be effectual and binding for all purposes upon the principals of the parties so served upon personal services, or 48 hours after mailing in the manner required herein.

22. Remedies. In the event that either party shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by that party and shall fail to cure said default within one hundred twenty (120) days following the service on the defaulting party of a written notice from the second party specifying the default complained of, then the second party may, at its option, without further notice or demand upon the defaulting party or upon any person claiming through the defaulting party, immediately terminate this agreement and all rights of the defaulting party and of all persons claiming rights through the defaulting party. Notwithstanding the above provisions, in the event that any default cannot be cured within one hundred twenty (120) days after the service of written notice upon the defaulting party, the second party shall not terminate this Agreement pursuant to said default if the defaulting party immediately commences to cure said fault and diligently pursues such cure to completion.

23. Indemnity. CITY agrees to defend, indemnify and save DISTRICT, its agents and employees harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of CITY, its agents or employees in connection with the performance of this Agreement and the use of the subject parcels. DISTRICT agrees to defend, indemnify and save CITY, its agents and employees harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of DISTRICT, its agents or employees in connection with the performance of this agreement and the use of the subject parcels.

24. Legal Proceedings. The parties agree that the law of the State of California shall be used in interpreting this Agreement and will govern all disputes under this Agreement and will determine all rights thereunder.

25. Verbal Agreements. This agreement contains the complete expression of the whole agreement between the parties hereto and there are no promises, representations, agreements, warranties, or inducements either expressed verbally or implied except as are fully set forth herein. This Agreement cannot be enlarged, modified, or changed in any respect except by written agreement between the said parties.

26. Severance. If any part of the Agreement contained herein is found by a court of competent jurisdiction to be void or voidable, that portion which is so held to be defective shall be severed from the remainder hereof, the latter to remain in full force and effect.

27. Amendment or Renewal. This Agreement may be amended or renewed in writing by mutual consent of DISTRICT and CITY as permitted by law.

28. Nondiscrimination. DISTRICT, CITY, and all others who from time to time may use the property and recreational facilities described herein with the permission

and on the terms and conditions specified by both parties shall not discriminate in any manner against any person or persons on account of race, color, sex, creed, or national origin including, but not limited to, the providing of goods, services, facilities, advantages, and the holding and obtaining of employment.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its City Manager pursuant to Ordinance No. O-18082 authorizing such execution, and by the San Diego Unified School District of San Diego County, California, acting by and through its Superintendent pursuant to a Resolution of its Board of Education.

THE CITY OF SAN DIEGO,
a Municipal Corporation

By: Marcia C. McLatchy
Marcia C. McLatchy

Title: Director, Park & Recreation

Date: July 7, 1994

SAN DIEGO UNIFIED SCHOOL DISTRICT OF SAN DIEGO COUNTY, CALIFORNIA

By: Bertha O. Pendleton
Bertha O. Pendleton
Superintendent

Date:

APPROVED AS TO FORM AND LEGALITY BY
JOHN W. WITT, CITY ATTORNEY

By: Mike Jackson

Date: 7-8-94

Approved in public meeting of the Board of Education of the San Diego Unified School District on 3/22/94.

Cheryl Ward
Cheryl Ward, Recording Secretary
Board of Education

LEGALITY AND FORM APPROVED:

JOSE GONZALES, Assistant General Counsel
San Diego Unified School District

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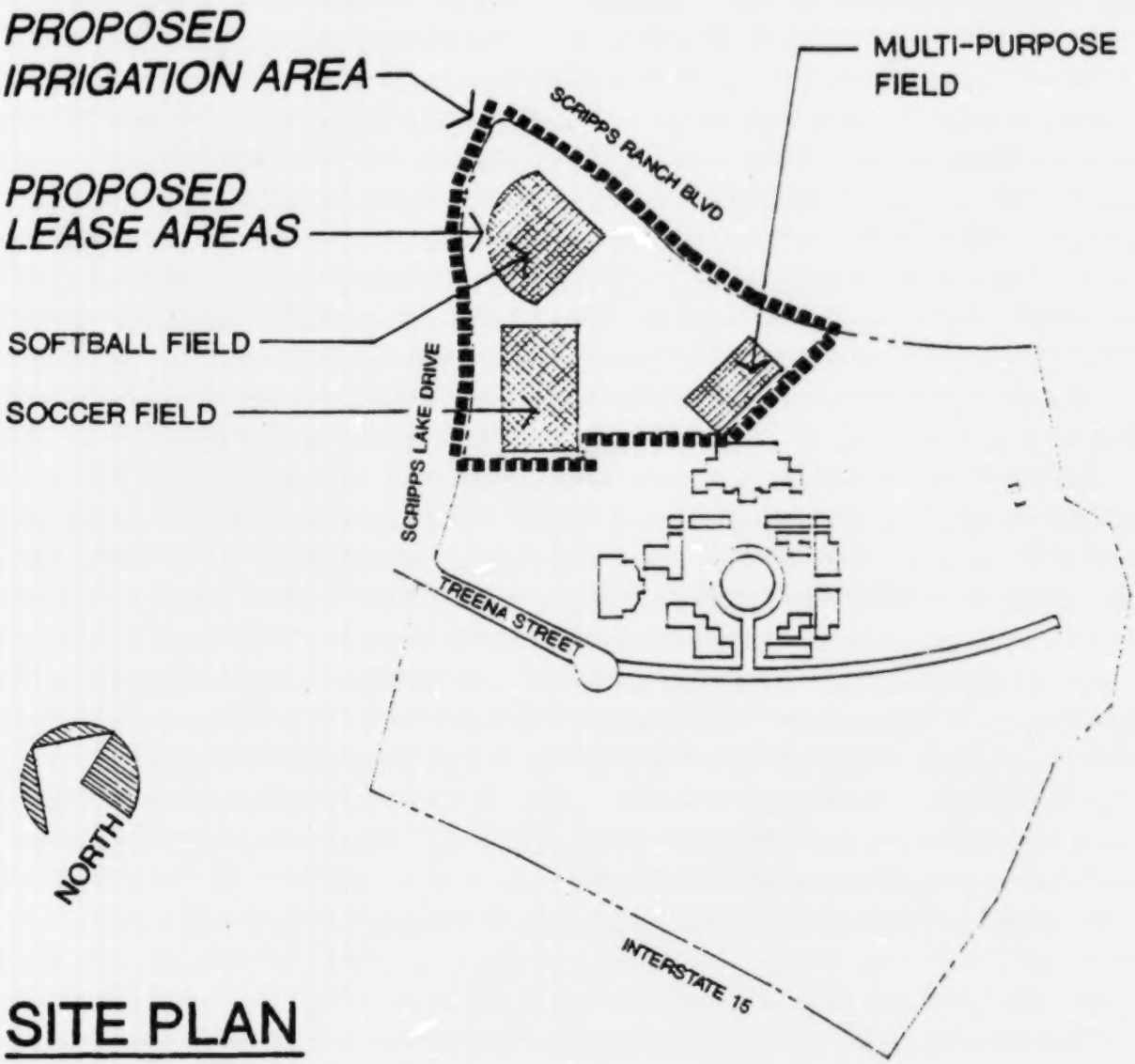

SITE PLAN

NOT TO SCALE

APPROVED BY	
DIRECTOR, FACILITIES SERVICES	DATE
SITE ADMINISTRATOR	DATE
SCHOOL DISTRICT ARCHITECT	DATE
CONSTRUCTION OFFICE	DATE
MAINTENANCE & OPERATIONS	DATE
CUSTODIAL & GARDENING	DATE

SD CS

SCRIPPS RANCH HIGH SCHOOL

EXHIBIT "A"

PREPARED FOR THE
BOARD OF EDUCATION
SAN DIEGO UNIFIED SCHOOL DISTRICT
SAN DIEGO, CALIFORNIA

PREPARED BY THE
FACILITIES SERVICES DEPARTMENT
OFFICE OF THE SCHOOL DISTRICT ARCHITECT

PROJECT NO.
DATE
DRAWN
CHECKED
SHEET NO.
OF SHEETS

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EXHIBIT "B"

SAN DIEGO UNIFIED SCHOOL DISTRICT
BUSINESS SERVICES DIVISION
FACILITIES SERVICES DEPARTMENT

RATE SCHEDULE FOR USE OF ELECTRICITY BY CITY
ON JOINT-USE FIELDS AT
SCRIPPS RANCH HIGH SCHOOL
BASED ON SITE SPECIFIC SAN DIEGO GAS & ELECTRIC RATES

March 1993

Constant: Connected Load for softball field lighting equals 45.2 kw
Connected Load for soccer field lighting equals 32.3 kw

Variable: Demand Charge - Non Coincidental (OFF PEAK RATE) equals $3.70 per kw
(One time charge to each field each month if lights are used at least 1 time)

Energy Charge - Summer/Winter (SEMI PEAK RATE) equals $ .05 per kwh

Formula: The formula for calculating the annual charge for lights on each field equals (connected load X demand charge X 12 months) + (hourly energy charge X number of hours per year)

Example Using 1992-93 Variables:	**Yearly Costs.**
SOFTBALL FIELD Connected Load: 45.2 kw	
Demand Charge: 45.2 kw X $3.70/kw equals $167.24 monthly X 12 months equals (One time charge each month if lights are used at least 1 time)	$2,006.88
Energy Charge: 45.2 kwh X $0.05/kw equals $ 2.26 per hour X 1040 hours equals	$2,350.40
SOCCER FIELD Connected Load: 32.3 kw	
Demand Charge: 32.3 kw X $3.70/kw equals $119.51 monthly X 12 months equals (One time charge each month if lights are used at least 1 time)	$1,434.12
Energy Charge: 32.3 kw X $0.05/kw equals $1.62 per hour X 832 hours equals	$1,347.84

(O-94-113)

ORDINANCE NUMBER O-18082 (NEW SERIES)

ADOPTED ON JUL 05 1994

BE IT ORDAINED, by the Council of The City of San Diego, that the City Manager is hereby authorized and empowered to execute, for and on behalf of the City, a twenty-five (25) year joint use agreement with the San Diego Unified School District, for the construction, operation, maintenance, and lease of turfed field and recreational facilities at Scripps Ranch High School, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. OO-18082.

BE IT FURTHER ORDAINED, that the expenditure of an amount not to exceed $100,000 from CIP No. 29-801.0, Scripps Ranch High School Joint Use Athletic Field Lighting, is hereby authorized, solely and exclusively for the construction of joint use athletic field lighting in accordance with the above agreement.

BE IT FURTHER ORDAINED, that this ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By Mary Kay Jackson
Mary Kay Jackson
Deputy City Attorney

MKJ:mb
05/17/94
Or.Dept:Pk&Rec
O-94-113
Form=o+t

Passed and adopted by the Council of The City of San Diego on July 5, 1994 by the following vote:

YEAS: Mathis, Roberts, Kehoe, Stevens, Warden, Stallings, McCarty, Vargas, Mayor Golding.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(Seal)

By: RHONDA R. BARNES, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O-18082 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on June 6, 1994 and on July 5, 1994.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

By: Rhonda R. Barnes, Deputy

(Seal)

APPENDIX C

JOINT USE AGREEMENT

POWAY CENTER FOR THE PERFORMING ARTS

This Agreement, made and entered into this 22nd day of May, 1990, by and between the City of Poway, and the Poway Redevelopment Agency (hereinafter collectively called "City"), and the Poway Unified School District, State of California (hereinafter called "District").

WITNESSETH

WHEREAS, the governing bodies of the City and the District are mutually interested in and concerned with the provision of community leisure activities, including cultural programs, under the auspices of the City Community Service Department, and in cooperation with the District; and

WHEREAS, cities and school districts are authorized by Chapter 10 of Part 7 of Division 1, Title 1 of the Education Code of the State of California (Sections 10900 et. seq.) to organize, promote, and conduct a community leisure activity program within or without their territorial limits; and

WHEREAS, the City has contributed $8,100,000,and the District has contributed $500,000 and the use of the site for the Center; and

WHEREAS, said governing bodies are authorized by Government Code of the state of California, Chapter 5 (Section 6500, et. seq.) to enter into agreements with each other to promote the health and general welfare of the community and contribute to the attainment of leisure activity goals and objectives for children and adults within the community; and

WHEREAS, the City has established a Community Services Department responsible for carrying out the purposes of community cultural enrichment; and

WHEREAS, in the interest of providing the best public service, cooperation between the City and the District is necessary.

NOW, THEREFORE, the City and the District agree as follows:

1. GRANT OF JOINT USE

The City will make available to the District the use of the Poway Center for the Performing Arts (hereinafter called the "facilities" or "Center") which the City has built on land leased to the City by the District, on the terms and conditions set forth in this Agreement.

2. PARKING

The District agrees to make parking available, on a first priority basis, to the City during City sponsored events at the Center, and that this priority parking shall be in the parking area on the south side of Titan Way; the District also agrees to make all other parking areas on District property available to the City, for City sponsored events at the Center, on a space available basis. It is agreed that parking spaces will be made available for the exclusive use of Center City staff and box office patrons and users in the parking area immediately adjacent to the west side of the Center. The number of these spaces shall be determined by mutual agreement between the Performing Arts Manager and the Principal of Poway High School; however, the number of spaces shall be at no time less than fifteen (15).

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3. SCHEDULING OF USE

Scheduling of the Center shall be done by the City's Performing Arts Manager. The City, in scheduling the facilities, shall make reasonable accommodation of the District's needs. The District shall have first priority for the day to day use of the band/rehearsal room, music office and practice rooms for the purpose of student instruction and related activities conducted by the Poway High School Music Department. The District shall have second priority for the day to day use of the stage area or green room or group dressing room, as scheduled by the Performing Arts Manager, for the purpose of student instruction and related activities conducted by the high school music department. The high school drama deparment shall have second priority for the day today use of this area, excluding the stage which only shall be available for scheduled rehearsals and performances of the high school drama department. This priority use shall be subordinate only to the need to use any of the aforementioned areas for load in, set up, rehearsal and other related preparations for a City sponsored event or an event presented by a third party user who has duly contracted for and scheduled the use of the facilities for that purpose thirty (30) days in advance. The City shall have access to and direct control at all times over all areas of the facilities excepting the band/rehearsal room, music office and practice rooms. The City shall have second priority use of the band/rehearsal room upon arrangement with Poway High School Music Department. The City shall have first priority for use of all public, technical, backstage and below stage areas for events and performances. The District shall have second priority for use of the facilities for similar purposes. Third party users shall have first priority for the use of the contracted facilities (excluding band room, etc.), when a fully executed contract exists between the City and a third party. Scheduling will be done using an open ended eighteen (18) month calendar. This calendar shall be reviewed, updated and revised on a quarterly basis.

4. EQUIPMENT AND IMPROVEMENTS

The City shall install, own and operate theatre-related technical equipment including, but not limited to, stage lighting equipment, audio equipment, stage rigging, stage draperies, portable acoustical shell sections, 16mm film and 35mm slide projection equipment, and a variety of portable tools and equipment. The City shall at all times retain title and control of this equipment. The District shall have the right to operate this equipment as authorized by the Performing Arts Manager. The District shall be responsible for the repair or replacement of any of the above indicated equipment damaged by act or omission resulting from District's use of the equipment. The City shall be responsible for the preventive and normal maintenance for all such equipment. The City and District shall independently acquire and maintain equipment for their respective specialized program needs. All storage of equipment and other materials in any area of the facility must be approved by the Performing Arts Manager to ensure that all necessary safety and security precautions are being taken.

5. BUILDING REPAIR AND MAINTENANCE

The City shall administer the guarantee period as part of the agreement with the General Contractor. Following the end of the guarantee period the costs of building repair and maintenance including, but not limited to, heating and air conditioning systems, fire prevention and suppression

equipment, security alarm system, plumbing, electrical wiring, roof, interior and exterior finishes are to be shared by the City and the District. The City shall pay sixty-five percent (65%) of all such costs and the District shall pay thirty-five percent (35%) of all such costs. The District shall pay all costs for all such repair and maintenance of the band/rehearsal room, music offices and practice rooms.

6. CUSTODIAL SERVICES

The City shall engage, by contract, custodial services to provide for the upkeep of all common areas of the facilities, the City's administrative offices, backstage areas including dressing rooms, green room and restrooms. The City and the District shall share the costs of these services. During During the initial operating year, in the absence of any previous operating experience, it is agreed that the City shall pay sixty-five percent (65%) of all such custodial costs and the District shall pay thirty-five percent (35%) of all such costs. The District's custodial staff shall provide the custodial services for the band/rehearsal room, music office and practice rooms. In the absence of a modification of cost sharing, the 65%/35% cost sharing shall prevail.

7. UTILITIES

The City and District shall share the costs of gas and electric service and water and sewer services. In the initial operating year, because of the lack of previous operating experience, it is agreed that the City shall pay sixty-five percent (65%) of such utility costs and the District shall pay thirty-five percent (35%).

8. TELEPHONES

The District shall provide for the installation of any phone lines and equipment in the music offices or band/rehearsal room area and shall be solely responsible for the costs of the monthly service charges originating from the use thereof. The City shall install a phone system and phone lines serving the box office and administrative offices and shall be responsible for the monthly service charges originating from the use thereof.

9. SECURITY

As agreed to herein, the City shall provide an electronic security system for the facilities. The band/rehearsal room will have a separate arm/disarm capability. The facilities shall be keyed so that all access to the Center, excepting the band/rehearsal room, shall be controlled by the City. The City and District shall share equally the cost of monitoring the security and fire alarm systems.

10. CITY AND DISTRICT COST SHARING

The City Manager and Superintendent shall review usage by each party during the previous year, and shall by March 15 of each year set percentages for City and District cost sharing for the upcoming fiscal year. For the first year, the District cost share shall be effective the month of September.

11. **USE CHARGES AND RETENTION OF INCOME**

The Center shall be made available to the parties hereto free of charge, excepting those costs agreed to hereinabove or hereinafter. The City and the District shall have the right to make and retain admission charges for their events. The City shall operate the Center box office at all times; however, the District shall have the option for each individual event, to use the Center box office for all ticket sales or having all ticket sales handled through the Poway High School campus ticket office. When selling tickets through the Center box office, the District shall share equally with the City the personnel costs for operating the box office for the period of time that the tickets to the District event are available for sale. The City shall operate the pre-show, post-show and intermission refreshment concession at all times, and all food and beverage served in or around the Center, whether for sale or given as complementary must be approved by the Performing Arts Manager. The District shall receive one hundred percent (100%) of the net concession income made during District sponsored events after the City's actual costs are deducted from the gross sales. The sale of all souvenir and other merchandise must be approved by the Performing Arts Manager.

12. **RENTAL POLICIES**

All rental fees and other charges collected by the City from third parties shall be retained by the City. All contractual agreements for the rental of the Center shall be exclusively between the City and the third party. Prior to the execution of any rental agreement for third party scheduled use, City and District uses shall have priority; however, after a rental agreement has been executed it shall have priority over all other uses.

13. **FACILITY STAFFING AND SUPERVISION OF ACTIVITIES**

It is agreed that the Performing Arts Manager, as the City's representative is the chief operating officer of the Center and is responsible for the overall management, scheduling and operation of the Center. It is understood and agreed that all activities at the Center sponsored by the District shall be supervised and conducted by the District; however, the Performing Arts Manager shall require professional theatre technicians to supervise the use of all technical and stage equipement in order to protect the safety of participants and the integrity of the equipment. The number of such personnel shall be set by the Performing Arts Manager upon recommendation from the City's Theatre Technical Supervisor, and that decision shall be final. The District agrees to reimburse the City for the cost of hiring all such supervisorial technical personnel.

14. **LIQUOR LICENSE**

The City, or its concessionaire or designee, shall apply for a liquor license to sell beer and wine at the Center, under the restrictions enacted by the Poway City Council in Resolution 90-008, Section 2: "The City Council of the City of Poway does hereby declare that it shall be the official policy of the City of Poway that no alcoholic beverages shall be sold or consumed on the premises on which the Poway Center for the Performing Arts is situated at any time during which students are attending a school sponsored activity at the Center or at any time during which a performance is being given by groups of persons under the age of twenty-one (21) years." The City and third party users shall occasionally apply for one day full liquor licenses for special events.

15. **EMPLOYMENT RELATIONSHIPS AND OBLIGATIONS**

For the purposes of this Agreement, all persons engaged in the performance of services and functions for the City shall be deemed City employees or independent contractors hired by the City, and no such person shall be considered as an employee of the District or under the jurisdiction of the district, nor shall any such person have any District pension, civil service or other status while so engaged by the City. The District shall not be responsible for the payment of any salary or contractor fee for any person performing services hereunder for the City. The City shall not be liable for compensation or indemnity to any District employee or independent contractor engaged by the District for injury or sickness or wages arising out of his/her contract with the District.

For the purposes of this Agreement, all persons engaged in the performance of services and functions for the District shall be deemed employees or independent contractors of the District and no such person shall have any City pension, civil service, or other status while so engaged by the District. The City shall not be responsible for the payment of any salary, wage or other compensation to any District personnel performing services hereunder for the District. District shall not be liable for compensation or indemnity to any City employee for injury or sickness or wages arising out of his/her employment with the City.

16. **INDEMNIFICATION**

The District shall indemnify, defend, and hold harmless the City, members of the City Council, Boards or Commissions, its employees, officers and agents, while acting as such, from any and all loss, damage, or expense, which may arise by reason of injury to property or injury to or death of persons, received or suffered at all District events or programs sponsored solely by the District.

The City shall indemnify, defend, and hold harmless the District, members of the board of Trustees, its employees, officers and agents, while acting as such, from any and all loss, damage, or expense, which may arise by reason of injury to property, or injury to or death of persons, received or suffered at all City events or programs sponsored solely by the City.

In the event that District and City jointly sponsor any event or program, neither shall be obligated to defend, indemnify, or hold harmless the other from any loss, damage, or expense, which may arise by reason of injury to property or injury to or death of persons received or suffered at such an event or program.

17. **INSURANCE**

During the term of this Agreement, each party shall obtain and maintain in full force and effect the following insurance coverage:

A. Worker's Compensation Insurance. Full worker's compensation insurance shall be provided that is necessary in connection with the performance of this Agreement to protect each party and their employees under the Worker's Compensation Act.

B. Liability Insurance. Each party hereto shall carry property damage and public liability insurance or self insurance that covers the areas and activities set forth in this Agreement under their insurance program which shall have limits of not less than $5,000,000. Each party shall be added as additional insured to the respective policies.

C. Certificate of Insurance. Each party shall deliver within fifteen (15) days of the demand of the other party, certificates of insurance or self insurance which shall provide that no cancellation, major change in coverage, or nonrenewal will be made during the term of this Agreement, without thirty (30) days written notice to the other party prior to the effective date of such cancellation, change in coverage, or nonrenewal.

18. TERM

The term of this Agreement shall coincide with the term of the Lease to the City by the District of the land underlying the facilities.

19. AMENDMENT

The provisions of this Joint Use Agreement may be amended or modified only by mutual consent and written agreement of the respective parties. The parties hereto agree that there shall be a periodic review of this Agreement for the purposes of assessing the need for any amendment or modification to the Agreement. Review will be held upon the request of either party.

20. DISPUTE RESOLUTION

A Joint Management Board shall be established for the purposes of doing a periodic review of this Agreement and for resolving any disputes. The Joint Management Board shall consist of the Director of Community Services and the Performing Arts Manager from the City and the Assistant Superintendent of Business and the Principal of Poway High School from the District.

21. SUPPLEMENTAL AGREEMENT

The City and District may enter into supplemental agreements to provide more specific detail regarding the operation of the Center. If there is any conflict between the supplemental agreement and this Joint Use Agreement, the supplemental agreement shall govern.

22. BINDING EFFECT

This Agreement shall inure to the benefit of an shall be binding upon the City and District and their respective successors and assigns.

IN WITNESS WHEREOF, the City and District have signed this Agreement on the respective dates indicated below at Poway, California.

POWAY REDEVELOPMENT AGENCY/
CITY OF POWAY

Don Higginson, Chairman/Mayor

Date: May 22, 1990

POWAY UNIFIED SCHOOL DISTRICT

Sharon Purviance, President
Board of Trustees

Date: June 11, 1990

ATTEST:

Marjorie K. Wahlsten, City Clerk/
Secretary to the Redevelopment Agency

Robert L. Reeves, Secretary
Board of Trustees

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